

parties have raised the issue of whether various aspects of the state tariffed services, such as bundling or inconsistent code assignment policies, will hinder or unduly penalize the aggregators' ability to prevent toll fraud.

23. The widespread existence of state OLS services persuades us that through those services aggregators will receive reasonable protection against toll fraud, at least on an interim basis, while we consider whether federal tariffs are required for these services. Therefore, we find that state tariffed services that provide OLS will satisfy the requirements of our order on an interim basis, pending further proceedings in this docket. However, on a longer term basis, we tentatively conclude that, in order to fulfill our Congressional mandate, the LEC OLS services must be federally tariffed and meet the minimum standards set forth in paragraph 16, *supra*. Finally, we decline to require any tariffing of supplemental databases which provide more detailed information about the nature of billing restrictions on a line because the record shows that doing so could impose an undue burden on some LECs without providing significantly better protection against fraud.

24. We solicit additional comment on whether state or federal tariffing of LEC OLS services would better serve the public interest and prevent toll fraud. We specifically request comment on whether the LECs' existing federally tariffed ANI II or Flex ANI services would meet the requirements of the Reconsideration Order.⁴² We also request comment on what additional codes have been, or could be, assigned by Bellcore to provide more detail about different classes of aggregator service and whether we should require that those codes be implemented by the LECs as Flex ANI is deployed. We also solicit comments on our proposed requirements for OLS. Finally, we request comments on how, if state tariffing of OLS is allowed, the Commission could ensure that state tariffed services would meet those minimum standards.

21-22 (impliedly required federal tariffing by setting same six month deadline for screening and blocking services; there is no language in the order to indicate that the Commission intended to allow its requirements to be satisfied by filing state tariffs); Pacific Reply at 2-4 (Commission implicitly found that such state tariffing would ensure that OLS is available to aggregators); NYNEX Petition at 3 (wants clarification that LECs are only required to offer OLS under their state tariffs); Bell Atlantic Reply at 2 (the order does not purport to regulate, or to require the interstate tariffing of toll or other billing restrictions that an aggregator may want to place on a telephone line).

⁴² The Reconsideration Order temporarily exempted aggregators in non-equal access areas from the requirement to unblock 10XXX. See Reconsideration Order, 7 FCC Rod at 4364. If LECs experience technical problems in delivering OLS services from these areas, we will entertain requests for waivers from the LECs.

3. Screening of Billed Numbers

25. Petitions and Comments. Bell Atlantic claims that ENS service is already available through its Line Information Database (LIDB) billing validation service, a federally tariffed offering.⁴³

26. Discussion. Proper prevention of toll fraud requires that the LECs provide a discrete unbundled ENS service. We tentatively find that Bell Atlantic's federally tariffed LIDB service does deliver the information required; the question is whether the service is provided in a way that is useful to customers, including aggregators and, therefore, we tentatively conclude that LEC ENS services must meet the requirements set forth in paragraph 16, supra. We also tentatively conclude that we would be better able to fulfill our congressional mandate to protect aggregators from being exposed to an unreasonable risk of toll fraud if the service was tariffed at the federal level. Because LECs have already filed LIDB tariffs which may meet this requirement, we tentatively conclude that federal tariffing of ENS should be required and would not impose unreasonable disruption or hardship on LECs.⁴⁴ However, we also find that state tariffed ENS services will satisfy the requirements of our order on an interim basis, pending further proceedings in this docket.

27. Therefore, we solicit comments on whether federal tariffing of ENS is technically and otherwise feasible. We also solicit comments on whether and if so, how, this service could be offered to aggregators rather than OSPs and how this requirement would affect ENS services tariffed at the state level. We also seek comment on whether the LECs' federal LIDB tariffs need to be amended to provide a ENS service that is available to aggregators and others.

4. Waivers and Extensions of Time

28. Petitions and Comments. SWBT requested that we grant SWBT a waiver of Section 61.74 of the Commission's Rules, 47 C.F.R. § 61.74, to allow it to cross-reference the blocking services for international calls in its state tariffs.⁴⁵ Several Petitioners also request that we allow more time for blocking services to be put in place if we allow state tariffing of these services or allow federal tariffs that incorporate state tariffs by

⁴³ Bell Atlantic Petition at 2.

⁴⁴ Some independent LECs do not plan to offer ENS through LIDB service directly but rather to transfer data to a third party that will operate the database for several independent LECs. We find that the bulk transfer of data by an independent LEC would satisfy its obligation, provided that the third party offers an effective ENS service on its behalf.

⁴⁵ SWBT Petition at 4; Pacific Petition at 12 n.14 (Pacific's waiver request references Sections 61.38, 61.47 and 61.49(g) and (h), as well as 61.74, 47 C.F.R. §§ 61.38, 61.47, 61.49(g) and (h), and 61.74).

reference. They argue that they cannot control how long state commissions will take to approve tariffs containing such blocking services and that, therefore, they cannot ensure compliance until after the states have acted.⁴⁶

29. Additionally, Pacific argues that, if its customer-owned pay telephone (COPT) and Toll Access Trunk services are federally tariffed, the Commission will need to create an additional service category and an additional basket or to exclude these services from price cap regulation. APCC counters that federal tariffing of those services is unnecessary because LEC blocking services are no more dependent on local services than are numerous other interstate services, such as long distance service.⁴⁷

30. Discussion. We decline to grant a waiver to allow either SWBT or Pacific to file a federal tariff that cross-references international blocking services contained in state tariffs. The Commission has found that it is in the public interest to unblock 10XXX access from aggregator telephones. We found that LEC blocking and screening services are essential to prevent toll fraud and that aggregators are not required to unblock 10XXX until they are in place. We have delayed requiring such unblocking for approximately ten months pending the outcome of this proceeding and the subsequent introduction of LEC blocking and screening services. We decline to allow any more time for LECs to comply with our requirement that they put international blocking services and screening services in place. With regard to the question of the proper price cap treatment, these will be new services and, therefore, will not immediately need to be classified by basket or service category.

IV. CONCLUSION

31. In this Order, we have declined either to reconsider our decision to require LECs to provide federally tariffed blocking of international direct-dialed calls or to extend the deadline for 10XXX unblocking. We have also sought comment on the steps the LECs must take to meet our requirement that they provide OLS and BNS services and on whether LECs should be required to offer international call blocking services to a wider class of customers.

V. EX PARTE PRESENTATIONS

32. This is a nonrestricted notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. §§ 1.1202, 1.1203 and 1.1206(a).

⁴⁶ SWBT Petition at 4; NYNEX Petition at 2 (should require international blocking to become effective 30 days after state tariffs become effective); GTE Petition at 3.

⁴⁷ APCC Opposition at 8 n.7.

VI. INITIAL REGULATORY FLEXIBILITY ANALYSIS

33. We have determined that Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605(b) does not apply to this rule making proceeding because if promulgated, it would not have a significant economic impact on a substantial number of small entities. The definition of a "small entity" in Section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Although some of the local exchange carriers that will be affected are very small, local exchange companies do not qualify as small entities because they have a nationwide monopoly on ubiquitous access to the subscribers in their service area. The Commission has found all exchange carriers to be dominant in the Competitive Carrier proceeding, 85 FCC 2d 1, 23-24 (1980). To the extent that small telephone companies will be affected by these rules, we hereby certify that these rules will not have a significant economic effect on a substantial number of "small entities." Although we do not find that the Regulatory Flexibility Act is applicable to this proceeding, this Commission has an ongoing concern with the effect of its rules and regulation on small business and the customers of the regulated carriers. The Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601, et seq.

V. ORDERING CLAUSES

34. Accordingly, IT IS ORDERED that, pursuant to authority contained in Sections 1, 4, 201-205, 218, 220 and 226 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 218, 220, and 226, that the policies and requirements set forth herein ARE ADOPTED.

35. IT IS FURTHER ORDERED that the Petitions for Reconsideration filed by Bell Atlantic, Cincinnati Bell Telephone, GTE Service Corporation, New York Telephone Company and New England Telephone and Telegraph Company, Pacific Telesis, Southern New England Telephone Company and Southwestern Bell Telephone Company, ARE DENIED.

36. IT IS FURTHER ORDERED that Southwestern Bell Telephone's Request for Waiver of Section 61.74 of the Rules, 47 C.F.R. § 61.74, and Pacific Bell's Request for Waiver of Sections 61.38, 61.47, 61.49(g) and (h) and 61.74(a) of the Rules, 47 C.F.R. §§ 61.38, 61.47, 61.49(g) and (h) and 61.74(a), ARE DENIED.

37. IT IS FURTHER ORDERED that this Order on Further Reconsideration will be effective thirty (30) days after publication of a summary thereof in the Federal Register.

38. IT IS FURTHER ORDERED that, pursuant to Sections 1, 4, 201-205, 226 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 151, 154, 201-205, 226 and 303(r), that a FURTHER NOTICE OF PROPOSED RULEMAKING IS ISSUED.

39. IT IS FURTHER ORDERED, pursuant to Sections 1.415 and 1.419 of the

Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, that all interested parties may file comments on the issues in paragraphs 14, 24 and 27 on which comment is specifically sought by May 10, 1993 and reply comments by June 9, 1993. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting comments. If participants wish each Commissioner to have a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M. Street, N.W., Washington, D.C. 20554.

40. IT IS FURTHER ORDERED that the Chief of the Common Carrier Bureau is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

41. IT IS FURTHER ORDERED that, the Secretary shall send a copy of this FURTHER NOTICE OF PROPOSED RULEMAKING, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981).

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

List of Parties Filing Petitions, Oppositions or Replies:

| | |
|--|-----------------|
| American Public Communications Council | (APCC) |
| American Telephone & Telegraph Company | (AT&T) |
| Ameritech Operating Companies | (Ameritech) |
| Bell Atlantic Telephone Companies | (Bell Atlantic) |
| Cincinnati Bell Telephone | (CBT) |
| GTE Service Corporation | (GTE) |
| MCI Corporation | (MCI) |
| New York Telephone Company and New England Telephone and Telegraph Company | (NYNEX) |
| Pacific Bell | (Pacific) |
| Southern New England Telephone Company | (SNET) |
| Southwestern Bell Telephone Company | (SWBT) |
| Sprint Corporation | (Sprint) |
| United States Telephone Association | (USTA) |

March 11, 1993

Separate Statement

of

Commissioner Ervin S. Duggan

In re: Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Order on Further Reconsideration and Further Notice of Proposed Rulemaking, CC Docket No. 91-35

I warmly support the proposals that we put forth in this item. If shown to be feasible, they should do much to help operator services providers, pay telephone owners, and end users protect themselves against toll fraud. I am assured that the Commission will conduct an expedited review of the record filed in response to these proposals.

The problem of telephone toll fraud continues despite recent laudable industry efforts to address it. The FCC, along with all other participants--- carriers, equipment manufacturers, local telephone companies, and end users--- has a role to play in combatting toll fraud.

The steps we propose today should make additional tools available to customers to help protect themselves:

* First, we propose to require local telephone companies to make available to all customers the international call blocking services that they already provide, under federal tariff, to call

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aggregators. These blocking services could help end users protect themselves against toll fraud by making it impossible to make illegal international calls--- the biggest source of toll fraud.

* Second, we propose to require federal tariffing of the local telephone company screening services that call aggregators need to protect themselves from other forms of fraud.

The Commission, in my judgment, must continue to put high priority on stemming toll fraud.
